No. 76-1596

In the Supreme Court of the United States

OCTOBER TERM, 1977

UNITED STATES OF AMERICA, PETITIONER

v.

JOHN MAUBO AND JOHN FUSCO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES

WADE H. McCREE, Jr.,
Solicitor General,
BENJAMIN R. CIVILETTI,
Assistant Attorney General,
ANDREW L. FREY,
Deputy Solicitor General,
H. BARTOW FARR III,
Assistant to the Solicitor General,
JEROME M. FEIT,
ELLIOTT SCHULDER,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 544 F. 2d 588. The opinion of the district court (Pet. App. E) is reported at 414 F. Supp. 358.

JURISDICTION

The judgment of the court of appeals (Pet. App. B) was entered on October 26, 1976, and a petition for rehearing with a suggestion for rehearing *en banc* was denied on March 15, 1977 (Pet. App. C and D). On April 11, 1977, Mr. Justice Marshall extended the time for the filing of a petition for a writ of certiorari

to and including May 14, 1977. The petition was filed on May 13, 1977, and was granted on October 3, 1977 (A. 58). The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a writ of *habeas corpus ad prosequendum* issued by a federal court to state authorities and directing the production of a state prisoner for arraignment on federal criminal charges constitutes both a "detainer" and a "request for temporary custody" making applicable the terms and conditions of Article IV of the Interstate Agreement on Detainers Act.

STATUTE INVOLVED

The pertinent portions of the Interstate Agreement on Detainers Act, 18 U.S.C. App., pp. 4475–4478, are set forth in the Appendix to our brief in *United States* v. *Ford*, No. 77-52.

STATEMENT

1. On November 3, 1975, respondents John Mauro and John Fusco were charged with criminal contempt of court, in violation of 18 U.S.C. 401, in separate indictments filed in the United States District Court for the Eastern District of New York. The charges stemmed from respondents' refusal to testify, despite a judicial grant of immunity, before a federal grand jury investigating violations of the federal drug laws (A. 1, 3, 5, 6).

When the indictments were returned, respondents were incarcerated at different New York State correctional facilities serving sentences on state criminal

charges.[1] Pursuant to separate writs of *habeas corpus ad prosequendum* issued by the United States District Court for the Eastern District of New York on November 5, 1975, each respondent was removed from state prison and produced before the district court for arraignment.[2] On November 24, 1975, respondents were arraigned upon their respective indictments and entered pleas of not guilty (A. 1, 3, 31). They were then retained in federal custody at the Metropolitan Correctional Center in New York City.

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[1] Respondent Mauro was serving a sentence of three years to life imprisonment at the Auburn, New York, Correctional Facility, and respondent Fusco was serving a sentence of one year to life imprisonment at the Clinton Correctional Facility, Dannemora, New York (Pet. App. 2a, n. 1).

[2] Each writ was in the same form and was addressed to the United States Marshal for the Eastern District of New York and the warden of the appropriate state correctional facility. The writs ordered that respondents be produced before the district court on November 19, 1975. Thus, for example, the writ employed to secure respondent Mauro's presence for arraignment provided as follows (A. 9):

"YOU ARE HEREBY COMMANDED to have the body of John Mauro now detained under your custody, as it is said, under safe and secure conduct, in civilian clothes, before the United States District Court for the Eastern District of New York, at the United States Courthouse, in such courtroom as shall be designated, in the Borough of Brooklyn, City, State and Eastern District of New York, on the 19th day of November at 10 o'clock in the forenoon of that day, for trial before said United States District Court for the Eastern District of New York upon an indictment filed in said Eastern District of New York against the said John Mauro charging him with violation of Title 18 United States Code, Section 401 and, at the termination of the proceedings in the said United States District Court on that particular day, that you return him forthwith to the Warden, Auburn Correctional Facility, Auburn, N.Y. under safe and secure conduct."

Thereafter, on December 2, 1975, respondents appeared before the federal district court for the purpose of fixing trial dates. After setting dates that were agreeable to counsel for respondents (A. 35–37), the district court observed that the Metropolitan Correctional Center was "overcrowded" (A. 37). Accordingly, the court directed that respondents be returned to their respective state prisons and thereafter be "writ[ted] down" shortly before trial (A. 37). After the court rejected the request of another defendant to remain at the federal detention facility, respondent Fusco expressed a preference to return to state prison, while respondent Mauro asked to remain at the Metropolitan Correctional Center if the warden had no objection (A. 37–38). The district court indicated that it did not oppose respondent Mauro's remaining at the Metropolitan Correctional Center so long as there was sufficient space available at the Center to accommodate him (A. 38). Shortly thereafter, however, both respondents were returned to their respective state facilities.

2. On April 26 and April 29, 1976, respectively, respondents Mauro and Fusco were again removed from state prison and brought before the district court under the authority of writs of *habeas corpus ad prosequendum*. Prior to these appearances, respondents had moved for dismissal of their indictments in the federal district court on the ground that they had been returned to state prison after their arraignments without having first been tried on the federal charges, in alleged violation of Article IV(e) of the Interstate Agreement on Detainers Act

("Agreement") (A. 1, 3, 19–24). Article IV(a) of the Agreement provides that the prosecuting authority of a member state in which criminal charges are pending against a defendant serving a prison sentence in another member jurisdiction may lodge a "detainer" with the prison authority of that jurisdiction and, upon presentation of a "written request for temporary custody," obtain temporary custody of the prisoner for purposes of trial.[3] The Agreement further provides that a prisoner so procured must be tried (a) within 120 days of his arrival in the receiving state (subject to continuances granted "for good cause shown in open court") and (b) prior to being returned to the sending state, or else the charges against him shall be dismissed with prejudice. Articles IV(c), IV(e), V(c).[4]

[3] Both the United States and New York had become signatories to the Agreement prior to the relevant events in this case. Act of December 9, 1970, Sections 1–8, 84 Stat. 1397–1403, 18 U.S.C. App., pp. 4475–4478; N.Y. Crim. Proc. L. § 580.20 (McKinney 1971).

[4] Article III of the Agreement provides an alternative means by which pending charges may be cleared. Under Article III(c), prison officials are required to notify each prisoner of any criminal charge on the basis of which a detainer has been lodged against him by another jurisdiction and, further, to inform the prisoner of his right to request trial on the charges underlying the detainer. The prisoner may then act to clear such a detainer by filing a request with the appropriate authorities in the prosecuting jurisdiction for final disposition of the charge against him. He must thereupon be brought to trial (a) within 180 days of delivery of this request and (b) without being returned to the sending state after his transfer to the prosecuting state, or else the charges are subject to dismissal with prejudice. Articles III(a), III(d), and V(c).

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The district court granted respondents' motions to dismiss the indictments (A. 2, 4, 47, 56). In its opinion accompanying the dismissal order in *Mauro*, the court rejected the government's argument that, because no "detainer" had been lodged against respondent Mauro[5] and because respondent had been produced before the district court solely pursuant to a writ of *habeas corpus ad prosequendum*, the Agreement's provisions were inapplicable and provided no grounds for dismissing the indictment. The court concluded that whenever the Agreement is "available" to produce a defendant for purposes of prosecution, "it is the exclusive means for doing so and the Government is charged with having invoked its provisions by use of the writ" (Pet. App. 40a). The court granted respondent Fusco relief on the basis of its decision in Mauro's case.

3. A divided panel of the court of appeals affirmed (Pet. App. 1a–23a). The majority held that the writ of *habeas corpus ad prosequendum* was a "detainer"

[5] In connection with a *civil* contempt adjudication (A. 27), federal officials had filed a "detainer" against respondent Mauro on July 9, 1975, several months before the return of the indictment in the case (A. 21, 28, 48–49). As we argue in our brief in *United States* v. *Ford*, No. 77–52, certiorari granted, October 3, 1977, the presence of a detainer does not engage the provisions of the Agreement when a prisoner's presence in court is accomplished by means of the federal writ *ad prosequendum*. However, even if the Court were to reject this analysis in *Ford*, Article IV by its terms would apply only to a detainer based on an "untried indictment, information, or complaint." Article IV(a). Thus, the detainer for civil contempt has no bearing on the question whether the subsequent criminal prosecution for criminal contempt was subject to the terms and conditions of the Agreement.

as that term is used in the Agreement and that the use of the writ by federal authorities in this case sufficed to activate the provisions of the Agreement. In the view of the majority, "[a]ny other construction would permit the United States to evade and circumvent the Agreement by simply utilizing the traditional writ" (*id.* at 8a; footnote omitted).

In dissent, Judge Mansfield, after examining the significant functional and legal differences between a detainer and a writ *ad prosequendum*, concluded that the writ is not a "detainer" within the Agreement, but rather a mandatory federal court order issued under the express authority of a statute (28 U.S.C. 2241(c)(5)) that was neither repealed nor modified by the Agreement (Pet. App. 17a–19a, 23a). Since the Agreement in his view applies only to prisoners against whom detainers have been lodged and not to prisoners, like respondents, who are produced pursuant to the writ without prior placement of a detainer, Judge Mansfield concluded that it afforded no basis for dismissal of respondents' indictments.[6] As Judge Mansfield stated (Pet. App. 20a):

> [T]he important point is that the Detainers Act applies only to those subject to detainers, not to persons surrendered pursuant to § 2241 writs or to proceedings in connection with which such writs are used.

[6] For reasons set forth in our brief in *United States* v. *Ford*, *supra*, we disagree with Judge Mansfield's view that the Agreement is applicable when a detainer has been lodged and the state prisoner's attendance in federal court is obtained by *ad prosequendum* writ.

SUMMARY OF ARGUMENT

This case presents the question whether a federal writ of *habeas corpus ad prosequendum* issued to state authorities to secure a prisoner for arraignment on federal charges constitutes both a "detainer" and a "request for temporary custody" making applicable the terms and conditions of the Interstate Agreement on Detainers Act. As we have discussed in our brief in *United States* v. *Ford*, No. 77–52, we do not believe that Congress intended the United States ever to be a receiving state subject to Article IV of the Agreement and, in any event, did not intend the United States to be subject to Article IV of the Agreement when it obtained state prisoners by the traditional *ad prosequendum* writ. If we are correct in either of these submissions, it follows that the decision of the court of appeals in this case must be reversed.

Even if the Court rejects our arguments in *United States* v. *Ford*, however, the *ad prosequendum* writ is not itself a "detainer," and its use, in the absence of a pre-existing detainer, does not activate the restrictions of Article IV of the Agreement. The Interstate Agreement on Detainers was drafted in large part to remedy the problems created by long-standing detainers lodged by prosecuting authorities against prisoners in other jurisdictions. By definition, a detainer is merely a notification that charges are pending against a prisoner in another jurisdiction and, far from seeking immediate delivery of the prisoner, merely asks that the prisoner be detained for possible delivery to another jurisdiction at the conclusion of his sentence. Detainers often remained outstanding for many years, adversely affecting the prisoners' opportunities for rehabilitation, even though in many instances the jurisdiction that had lodged the detainer ultimately decided not even to prosecute the pending charges. The *ad prosequendum* writ, however, initiates immediate proceedings and thus provokes none of the evils against which the Agreement was designed to protect. Indeed, the Agreement on its face treats the lodging of a detainer and a request for custody as separate and distinct acts.

Moreover, no substantial interest is served by stretching the term "detainer" to include the *ad prosequendum writ*. The Speedy Trial Act of 1974 provides comprehensive protection for the rights of prisoners facing federal charges. Although the Speedy Trial Act does not require dismissal of charges whenever a defendant is returned to state prison before trial, there is no evidence that Congress intended to confer this technical windfall on state prisoners without regard to the problems of overcrowded and inconvenient federal facilities, and the prisoners derive little if any benefit from this restriction.

ARGUMENT

THE WRIT OF HABEAS CORPUS AD PROSEQUENDUM DOES NOT CONSTITUTE BOTH A DETAINER AND A REQUEST FOR TEMPORARY CUSTODY MAKING APPLICABLE ARTICLE IV OF THE INTERSTATE AGREEMENT ON DETAINERS

Our brief in *United States* v. *Ford, supra,* sets forth our position that Congress, when it enacted the

Interstate Agreement on Detainers Act in 1970, did not understand or intend that the Agreement would apply to the United States as a "receiving state." We have also argued that, in any event, a writ of *habeas corpus ad prosequendum* is not a "request" for purposes of Article IV of the Agreement. In our view, these conclusions are compelled by the structure and purposes of the Agreement, viewed in context of the federal *habeas corpus* statute and the Speedy Trial Act of 1974.

Many of these arguments are relevant to the additional question presented in this case: whether the *ad prosequendum* writ itself is a "detainer" for purposes of Article IV of the Agreement. To the extent possible, therefore, we shall rely on the materials discussed in *Ford* without repeating them.[7] Should the Court accept either of our submissions in *Ford*, that decision would control this case as well. Even if the Court should disagree with our *Ford* arguments, however, we think it plain that a writ of *habeas corpus* simply is not a "detainer" and does not by itself make applicable Article IV of the Interstate Agreement on Detainers. The majority of appellate courts to consider this issue agree with us. See *United States* v. *Kenaan*, 557 F. 2d 912 (C.A. 1), petition for a writ of certiorari pending, No. 77-206; *United States* v. *Scallion*, 548 F. 2d 1168 (C.A. 5), petition for a writ of certiorari pending, No. 76-6559; *Ridgeway* v. *United States*, 558 F. 2d 357 (C.A. 6), petition for a writ of certiorari pending, No. 77-5252; *United*

[7] We are sending copies of our *Ford* brief to respondents.

States v. *Ricketson*, 498 F. 2d 367 (C.A. 7). Contra, *United States* v. *Sorrell* and *United States* v. *Thompson*, C.A. 3, Nos. 76-1647 and 76-1976, decided August 22, 1977 (*en banc*) petition for writs of certiorari pending, No. 77-593.

1. The Interstate Agreement on Detainers was drafted to serve two principal purposes. First, the Agreement sought "to encourage the expeditious and orderly disposition of [outstanding] charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints" (Article I). Second, the Agreement intended "to provide * * * cooperative procedures" to facilitate disposition of those charges. *Ibid.* Prior to the Agreement, states had experienced difficulties in obtaining prisoners from other jurisdictions through the cumbersome extradition process and had gradually developed a practice of lodging a "detainer" with the prison authorities and deferring prosecution efforts until the prisoner was released (see *Ford* Br. 22-29).

The detainer lodged with prison authorities was merely an administrative request to hold the prisoner at the end of his existing sentence. The House and Senate Reports on the Detainers Act define it as "a notification filed with the institution in which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction" (H.R. Rep. No. 91-1018, 91st Cong., 2d Sess. 2 (1970); S. Rep. No. 91-1356, 91st Cong., 2d Sess. 2 (1970)). A detainer did not demand immediate delivery of the prisoner to the requesting state; indeed,

its purpose was precisely the opposite, since it enabled the prosecutor to postpone further proceedings without risking loss of the prisoner. As constitutional speedy trial provisions did not bind the states until 1967, see *Klopfer* v. *North Carolina,* 386 U.S. 213, and as the prisoner had no way of forcing trial on the detainer, see *Crow* v. *United States,* 323 F. 2d 888 (C.A. 8) (a situation that has since changed, see *Braden* v. *30th Judicial Circuit Court of Kentucky,* 410 U.S. 484), these detainers often remained outstanding against the prisoner for extended periods of time. Frequently, the charges on which they were based ultimately were dropped when the prisoner was released.

As the House and Senate Reports on the Detainers Act reflect, the presence of state detainers caused substantial concern among prison officials. Development of a comprehensive rehabilitation plan was impeded by uncertainties about the prisoner's future. In many cases, such detainers precluded the prisoner from participating in particular programs or from receiving special assignments. Moreover, a prisoner with unclear prospects has less incentive to cooperate with rehabilitation efforts (H.R. Rep. No. 91–1018, *supra,* at 3; S. Rep. No. 91–1356, *supra,* at 3).

Article III of the Interstate Agreement was drafted to remedy this problem. While Article IV gave member states a more expedient method of obtaining prisoners in other jurisdictions, and therefore assisted states seeking to provide prompt trials, Article III gave prisoners the right to demand trial of charges on which detainers were based. Whether or not the

prosecuting state sought to proceed, therefore, it was required by virtue of the Agreement to bring the prisoner to trial within 180 days of the receipt of his request for trial, subject to continuances "for good cause shown in open court, the prisoner or his counsel being present." Article III(a). If the prosecutor failed to do so, the charges were dismissed and "any detainer based thereon * * * cease[d] to be of any force or effect." Article V(c).

Although aware of the general detainer problem, Congress, in enacting the Agreement on behalf of the United States, was specifically concerned with "elimination of abuses of detainers by states—not of abuses of the writ of habeas corpus ad prosequendum by federal prosecutors." *United States* v. *Scallion, supra,* 548 F. 2d at 1172–1173, nn. 5, 6; *United States* v. *Kenaan, supra,* 557 F. 2d at 915, n. 7. As we have discussed in our *Ford* brief (pp. 29–34). Congress entered into the Agreement to give states surer access to federal prisoners, an increasingly pressing need after *Smith* v. *Hooey,* 393 U.S. 374, and *Dickey* v. *Florida,* 398 U.S. 30, were decided, and to reduce the rehabilitation problems for federal prisoners caused by languishing state detainers. Neither the Act nor its legislative history contains any indication that Congress meant to place unnecessary restrictions on the traditional writ of *habeas corpus ad prosequendum* (*Ford* Br. 29–34) or to require the federal government to forego the writ entirely and depend solely on the Detainers Act. But even assuming, *arguendo,* that Congress did in-

tend the United States to be a receiving state under the Act and use of the *ad prosequendum* writ to be restricted in certain cases, there is nevertheless no basis for holding that the writ is also a "detainer" for purposes of the Act. As other courts of appeals have already noted (*United States* v. *Kenaan, supra; United States* v. *Scallion, supra; Ridgeway* v. *United States, supra*), use of the *ad prosequendum* writ does not provoke the evils against which the Agreement provides.

2. The writ of *habeas corpus ad prosequendum* has had a long history (*Ford* Br. 18–22). Long before the adoption of the Agreement, federal district courts customarily used the writ of *habeas corpus ad prosequendum* for the purpose of bringing a prisoner before the court for trial. The writ is not a mere request but a judicial order designed to secure the necessary physical custody over a prisoner to effectuate the existing criminal jurisdiction of the court. See note 2, *supra*. In addition, the writ *ad prosequendum*, which is subject to immediate execution, facilitates the expeditious resolution of pending criminal charges and thus ensures the defendant a speedy trial in accordance with constitutional as well as statutory guarantees. See *McDonald* v. *Ciccone*, 409 F. 2d 28, 30 (C.A. 8); *United States ex rel. Moses* v. *Kipp*, 323 F. 2d 147, 149–150 (C.A. 7). Use of the writ to bring a state prisoner before a federal court for trial and sentence was sufficiently common to be characterized by one court as "standard operating procedure." *United States* v. *Schurman*, 84 F. Supp. 411, 413 (S.D. N.Y.).

Unlike a typical detainer, the writ of *habeas corpus ad prosequendum* does not require action in the distant future and indeed has no continuing effect. It is not a notice that the prisoner may someday be wanted for trial on federal charges, as an arrest warrant would be,[8] but is a federal court order commanding that the prisoner be brought before the court at a specified time so that the court may exercise its jurisdiction over him. It therefore signifies an intent to proceed with charges, not to defer them. As Judge Mansfield correctly noted: "[The writ] is executed at once and, upon return of the prisoner to the state institution, it does not remain outstanding against him as would a detainer" (Pet. App. 20a).[9]

Treatment of the writ as a "detainer" is not only unnecessary for purposes of the Agreement but also is inconsistent with its plain language. Article IV(a) of the Agreement states that the prosecuting official in the receiving state "shall be entitled to have a prisoner *against whom he has lodged a detainer* * * * made available * * * *upon presentation of a written*

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[8] The federal government has lodged warrants as detainers with state prison officials. See, *e.g.*, *United States* v. *Ford*, 550 F. 2d 732 (C.A. 2).

[9] In one instance prior to the enactment of the Agreement by Congress, a state prisoner sought to remove a detainer filed against him by federal authorities by petitioning the federal court for the issuance of a writ of *habeas corpus ad prosequendum*. *Crow* v. *United States*, 323 F. 2d 888 (C.A. 8). While the court denied the relief sought, its discussion of the writ's function vis-a-vis the detainer demonstrates that the two are different legal tools serving different ends. Cf. *Huston* v. *State of Kansas*, 390 F. 2d 156 (C.A. 10) (federal prisoner challenging state detainer).

request for custody or availability to the appropriate authorities of the [sending] State" (emphasis supplied). On its face, the Agreement appears to regard the lodging of a detainer and the presentation of a request for custody as two discrete events and the "detainer" and "request" as two separate documents. There is no reason rooted either in policy or elsewhere in the language of the Agreement for refusing to give these words their normal meaning.

The court of appeals justified its reading of the Agreement on the ground that "[a]ny other construction would permit the United States to evade and circumvent the Agreement by simply using the traditional writ" (Pet. App. 8a; footnote omitted). That rationale depends, of course, on the incorrect assumption that Congress intended the Agreement to impose conditions on use of the writ. It also completely overlooks the fact that the writ, standing alone, entails none of the evils that were thought to inhere in the pendency of long-standing detainers and that motivated promulgation of the Agreement. Since the writ does not function like a detainer, its use in the absence of a detainer cannot fairly be condemned as a circumvention of the purpose of the Agreement.

The majority below also appears to have assumed that the Agreement is indispensable to a reasonable system of interjurisdictional transfer and that, if the federal government is not held to be entirely subject to its terms, it would benefit at the expense of a prisoner's substantive rights. That assumption is likewise incorrect. Indeed, state prisoners like respondents

would lose virtually no substantive rights vis-a-vis the United States if the Agreement were immediately repealed.

Under the Speedy Trial Act of 1974, once the United States charges a state prisoner with a federal crime it must promptly either secure his presence or file a detainer against him. 18 U.S.C. (Supp. V) 3161 (j)(1). If it elects to utilize an *ad prosequendum* writ to obtain his presence for arraignment, the prisoner must be tried within 60 days thereafter. 18 U.S.C. (Supp. V) 3161(c). Thus, when the United States files no detainer and proceeds by writ, the prisoner faces no risk whatsoever that his rehabilitation will be adversely affected by a long-standing notice of pending but unresolved charges.[10] Even if the United States did file a detainer, moreover, the defendant could request trial on the charges, 18 U.S.C. (Supp. V) 3161(j)(2), and the federal government would be obliged to obtain his presence promptly.[11] 18 U.S.C. (Supp. V) 3161(j)(3). Trial within 60 days after arraignment would again be required.

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[10] Even before the Agreement, a prisoner brought to answer on federal charges would be entitled to a speedy trial under the Sixth Amendment and applicable local rules. Since it had already obtained him once by the writ, the United States could hardly contend that the prisoner was unavailable for purposes of thereafter providing him with a speedy trial.

[11] Although there was no formal procedure before the Agreement for state prisoners to clear federal detainers, those prisoners like respondents against whom the United States was proceeding by writ of *habeas corpus* had no such need. Moreover, in enacting the Agreement, Congress was primarily concerned with abuses of state detainers, not with proceedings under the federal writ. See *United States* v. *Scallion*, *supra*, 548 F. 2d at 1172–1173, nn. 5, 6.

Thus, the only material consequence of stretching the term "detainer" to include the *ad prosequendum* writ is to produce dismissal of charges when the defendant is returned to state prison before trial. Article IV(e). In view of the peculiar problems involved in federal custody of state prisoners (see *Ford* Br. 33–34), it is extremely unlikely that Congress meant to extend this technical windfall to every prisoner returned for convenience to a nearby state prison or, as here, sent back to state prison because of severe overcrowding at the federal facilities. Nor is the provision of particular necessity in the context of state-to-federal transfers by the *ad prosequendum* writ; such transfers can be conducted immediately, unlike repeated interstate or federal-to-state transfers, which are subject in each instance to a 30-day delay (Article IV(a)) and would thus cut against efforts to provide the speediest possible trial.

In the present case, it was not until respondents had been returned to state custody that any of the parties even suggested that the Agreement governed the transfers of respondents from state prison to federal court. Neither respondent objected to being returned to state prison on the ground that such action would violate the Agreement (A. 37–38); on the contrary, respondent Fusco affirmatively requested that

One commentator has stated: "[U]nder the Interstate Agreement the convict has no rights unless the prosecution has filed a detainer on the basis of the pending charge, regardless of whether he knows of the existence of such a charge." Note, *Convicts—The Right to a Speedy Trial and the New Detainer Statutes*, 18 Rutgers L. Rev. 828, 859 (1964).

he be sent back to the state facility where he had previously been incarcerated.[12] Compare *United States* v. *Ford*, 550 F. 2d 732, 742 (C.A. 2); *United States* v. *Scallion, supra*, 548 F. 2d at 1170. Additionally, there is no evidence that the use of the writ in this case had any effect upon respondents' eligibility for, and participation in, the rehabilitation programs offered by the state. In fact, if a goal of the Agreement is to ensure minimal disruption of the prisoner's involvement in rehabilitation programs, that goal would appear better served by returning federal defendants to state custody between arraignment and trial, rather than retaining them for an additional few months in federal custody, often in a local jail where they would be cut off from their existing state rehabilitation programs and where fresh rehabilitative opportunities would be minimal.

[12] In dismissing the government's argument that respondent Fusco had waived his rights under Article IV(e) of the Agreement by requesting to be returned to state prison following his arraignment, the court of appeals observed that, immediately before his request, another defendant's request to remain in federal custody had been denied by the district court because of overcrowding at the Metropolitan Correctional Center. In view of this, the majority below reasoned, it would have been futile for respondent Fusco to have made the same request (Pet. App. 6a, n. 3). Although we did not present this issue in our petition for certiorari, we note that denial of another defendant's request hardly compelled respondent Fusco to express a preference to return to the state institution. Indeed, following respondent Fusco's request, respondent Mauro and two other defendants stated that they wished to remain at the federal detention center, and the district court indicated that it had no objection provided that the center had sufficient space to accommodate them (A. 38).

This is not a case, therefore, where it is necessary or appropriate to stretch the language of a statute to serve a beneficent purpose. The writ of *habeas corpus ad prosequendum* is significantly different from a detainer, and treating it otherwise appears to be outside the understanding of Congress and the objectives of the Detainers Act itself.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.
BENJAMIN R. CIVILETTI,
Assistant Attorney General.
ANDREW L. FREY,
Deputy Solicitor General.
H. BARTOW FARR III,
Assistant to the Solicitor General.
JEROME M. FEIT,
ELLIOTT SCHULDER,
Attorneys.

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